

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDNEIL HANIF,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

CASE NO. C15-1203-RAJ-MAT

REPORT AND RECOMMENDATION

INTRODUCTION

Petitioner, a native and citizen of Figi and lawful permanent resident of the United States, is detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest Detention Center in Tacoma, Washington. Proceeding *pro se*, he filed the instant habeas corpus petition pursuant to 28 U.S.C. § 2241, seeking release from immigration detention or an individualized bond hearing before an Immigration Judge (“IJ”). (Dkt. 1.) Respondent has moved to dismiss, arguing that petitioner’s detention is statutorily authorized. (Dkt. 10.) Petitioner did not file a response.

For the reasons discussed below, the Court concludes that petitioner’s detention is lawful, and therefore recommends that respondent’s motion to dismiss be granted, petitioner’s habeas

petition be denied, and this action be dismissed with prejudice.

BACKGROUND

Petitioner was arrested in October 2013 after leading police on a high speed car chase while driving a stolen vehicle with four unwilling passengers. (Dkt. 11-7 at 4.) He pleaded guilty to Second Degree Kidnapping, Attempting to Elude a Pursuing Police Vehicle, Possession of a Stolen Motor Vehicle, and Second Degree Taking a Motor Vehicle without Permission, all felonies. (Dkts. 11-1 & 11-6.) In February 2014, the state court sentenced him to 20 months in prison. (Dkts. 11-1 & 11-6.)

On November 12, 2014, petitioner was transferred to ICE's custody from the state corrections facility where he had been serving his 20-month sentence. (Dkt. 11-4 at 4.) Petitioner was served with a Notice to Appear, charging him with removability under 8 U.S.C. §§ 1227(a)(2)(E)(ii) and 1227(a)(2)(A)(i), based on his convictions stemming from the high speed car chase and an earlier conviction for violating a domestic no contact order. (Dkt. 11-10.) ICE made the initial custody decision that petitioner would be detained during his removal proceedings. (Dkt. 11-8.)

On June 3, 2015, petitioner received a bond hearing pursuant to *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (alien detained pursuant to 8 U.S.C. § 1226(c) is entitled to a bond hearing when he or she has been detained for more than six months and release or removal is not imminent). (Dkts. 11-3, 11-7, and 11-12.) The IJ found that petitioner "has a long and very serious criminal history, including dangerous behavior and resisting and eluding police. His most recent criminal conduct endangered the lives of police, motorists, and the passengers in his vehicle." (Dkt. 11-7 at 5.) Accordingly, the IJ found that the Department of Homeland Security met its burden to show that petitioner was a danger to the community by clear and convincing

1 evidence, and denied bond. (*Id.*) Petitioner's appeal of the bond determination is currently
2 pending before the Board of Immigration Appeals. (Dkt. 11-13.)

3 Petitioner's removal hearing is scheduled for November 5, 2015. (Dkt. 11-4.)

4 DISCUSSION

5 Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of
6 aliens, such as petitioner, who are in removal proceedings. Section 1226(a) grants the Attorney
7 General discretionary authority to determine whether an alien should be detained, released on
8 bond, or released on conditional parole pending the completion of removal proceedings, unless
9 the alien falls within one of the categories of criminal aliens described in § 1226(c), for whom
10 detention is mandatory. *See* 8 U.S.C. § 1226. Section 1226(c) provides in relevant part:

11 The Attorney General shall take into custody any alien who . . . is deportable
12 under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the
13 alien has been sentence[d] to a term of imprisonment of at least 1 year . . . when
14 the alien is released, without regard to whether the alien is released on parole,
supervised release, or probation, and without regard to whether the alien may be
arrested or imprisoned again for the same offense.

15 8 U.S.C. § 1226(c)(1). Section 1226(c) applies only when ICE takes an alien into custody
16 immediately upon his release from non-ICE custody. *Khoury v. Asher*, 3 F. Supp. 3d 877, 887-
17 88 (W.D. Wash. 2014).

18 The Ninth Circuit has held that mandatory detention under § 1226(c) is permissible only
19 until detention becomes prolonged, at which time the statutory authority for an alien's detention
20 shifts to § 1226(a). *Rodriguez*, 715 F.3d at 1138. "As a general matter, detention is prolonged
21 when it has lasted six months and is expected to continue more than minimally beyond six
22 months." *Id.* (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1092 n.13 (9th Cir. 2011)). Once §
23 1226(a) governs the alien's detention, he is entitled to an individualized bond hearing before and

1 IJ where the government has the burden of establishing by clear and convincing evidence that he
2 presents a danger to the community or a flight risk. *Id.* at 1138-39; *see also Singh v. Holder*, 638
3 F.3d 1196, 1203-09 (9th Cir. 2011). To comply with due process, the government must create a
4 contemporaneous record of the bond hearing, such as a transcript or an audio recording.
5 *Rodriguez*, 715 F.3d at 1136, 1139. Additionally, “in considering whether the government has
6 proven dangerousness, IJs should consider the factors identified in *In re Guerra*, 24 I. & N. Dec.
7 37 (B.I.A. 2006), which include the extensiveness of an alien’s criminal record, the recency of
8 his criminal activity, and the seriousness of his offenses.” *Id.* at 1135. Federal district courts
9 have habeas jurisdiction to review bond hearing determinations for constitutional claims and
10 legal error. *Singh*, 638 F.3d at 1200.

11 In this case, petitioner’s detention was initially governed by § 1226(c) because he was
12 transferred directly from state custody to ICE custody. (Dkt. 11-4 at 4.) After six months,
13 however, the authority for his detention shifted to § 1226(a), and he received a *Rodriguez*
14 hearing. (See Dkt. 11-3 at 4.) The record establishes that petitioner’s *Rodriguez* hearing
15 complied with all procedural requirements. *See Rodriguez*, 715 F.3d at 1135-36, 1139; *Singh*,
16 638 F.3d at 1203-09. There is a transcript of the hearing. (Dkt. 11-3.) The IJ appropriately
17 placed the burden on the government to prove by clear and convincing evidence that petitioner
18 presented a danger to the community. (*Id.*) The IJ also appropriately considered the *Guerra*
19 factors, finding that petitioner has “a long and very serious criminal history,” and that “[h]is most
20 recent criminal conduct endangered the lives of police, motorists, and the passengers in his
21 vehicle.” (Dkt. 11-7 at 5.) Given that petitioner received a procedurally sound *Rodriguez*

1 hearing, he has been given all the benefits of due process to which he is entitled.¹ Petitioner's
 2 habeas petition should be denied.

3 CONCLUSION

4 For the foregoing reasons, the Court recommends that respondent's motion to dismiss
 5 (Dkt. 10) be GRANTED, petitioner's habeas petition (Dkt. 1) be DENIED, and this matter be
 6 DISMISSED with prejudice. A proposed order accompanies this Report and Recommendation.

7 DEADLINE FOR OBJECTIONS

8 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
 9 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
 10 and Recommendation is signed. Failure to file objections within the specified time may affect
 11 your right to appeal. Objections should be noted for consideration on the District Judge's
 12 motions calendar for the third Friday after they are filed. Responses to objections may be filed
 13 within **fourteen (14) days** after service of objections. If no timely objections are filed, the
 14 matter will be ready for consideration by the District Judge on **November 27, 2015**.

15 DATED this 3rd day of November, 2015.

16
 17 
 18 Mary Alice Theiler
 19 United States Magistrate Judge

20
 21 ¹ To the extent petitioner wishes to challenge the IJ's discretionary decision to deny bond, the Court is
 22 without jurisdiction to consider his claims. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment
 23 regarding the application of this section shall not be subject to review. No court may set aside any action or decision
 by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or
 denial of bond or parole."); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) ("[An] alien may appeal
 the IJ's bond decision to the BIA, *see* 8 C.F.R. § 236.1(d), but discretionary decisions granting or denying bond are
 not subject to judicial review, *see* § 1226(e).").